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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/749,555	12/28/2000	Masahiro Ando	G5030.0023 /P023	5633

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EXAMINER	
NAJARIAN, LENA	

ART UNIT	PAPER NUMBER
3626	

DATE MAILED: 05/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/749,555	ANDO ET AL.	
	Examiner	Art Unit	
	Lena Najarian	3626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *16 February 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,2,4-10,12-19 and 26* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,2,4-10,12-19 and 26* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Notice to Applicant

1. This communication is in response to the request for continued examination (RCE) filed on 2/16/06. Claims 1-2, 4-10, 12-19, and 26 are pending. Claims 1, 12, 14, 16, and 18 have been amended. Claims 3 and 11 have been canceled. Claim 26 is newly added.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-2, 9, 12, and 14-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Richardson et al. (5,976,083).

(A) Referring to claim 1, Richardson discloses an exercise monitor, comprising (abstract of Richardson):

a motion sensor adapted to measure an exercise motion of a user (col. 16, lines 60-66 and col. 19, lines 45-50 of Richardson);

identity check means for verifying said user's identity, said identity check means operable in an active mode, wherein said verifying said user's identity is processed by said user in said exercise motion right after a predetermined length of time has passed (col. 17, lines 21-37 of Richardson);

a wearing check means to verify that said monitor is actually being worn by said user (col. 15, lines 38-54 and col. 17, lines 27-30 of Richardson); and

recording means for recording an output data of said motion sensor (col. 16, lines 60-65 of Richardson);

wherein said recording means records said exercise motion as valid data only after said identity check means has verified said user's identity when said identity check means is operated in said active mode and said wearing check means has verified that said monitor is actually being worn by said user (col. 17, lines 20-51 of Richardson).

(B) Referring to claim 2, Richardson discloses wherein said verifying said user's identity is processed without notice (col. 17, lines 5-37 of Richardson).

(C) Referring to claim 9, Richardson discloses wherein said verifying said user's identity is processed by physiological data of said user (abstract of Richardson; the Examiner interprets "heart rate" to be a form of "physiological data").

(D) Referring to claim 12, Richardson discloses wherein said wearing check means is activated based on an instruction which said user can not obtain unless said user is actually wearing said exercise monitor adjacent to the skin of said user (col. 17, lines 20-37 and col. 15, lines 38-40 of Richardson).

(E) Referring to claim 14, Richardson discloses wherein said wearing check means is processed based on a characteristic signal which can be detected only when said user is exercising while wearing said exercise monitor (col. 4, lines 1-27 of Richardson).

(F) Referring to claim 15, Richardson discloses wherein said exercise monitor is provided with a step counter equipped with said motion sensor to detect a walking

motion, and said motion sensor can verify said wearing by a motion characteristic of walking (col. 4, lines 1-27 of Richardson).

(G) Referring to claim 16, Richardson discloses wherein said wearing check means is actually being worn by said user, is processed if there is a high correlation between physiological data of said user which is obtained only if said monitor is actually being worn by said user, and an output of said exercise monitor (col. 1, lines 5-13 and col. 31, lines 39-44 of Richardson; the Examiner interprets "heart rate" to be a form of "physiological data" and "expended energy" to be a form of "output").

(H) Referring to claim 17, Richardson discloses wherein said physiological data of said user is a synchronized exercise rhythm generated by said exercise monitor and obtained only if said monitor is actually being worn by said user, and said verifying is processed if there is a high correlation between said synchronized exercise rhythm and a pulse wave data of said user which is said output of said exercise monitor (col. 4, lines 19-26 and col. 27, lines 60-67 of Richardson; the Examiner interprets "gait" to be a form of "exercise rhythm" and "beat" to be a form of "pulse").

(I) Referring to claim 18, Richardson discloses wherein said wearing check means is processed if there is a high correlation between acceleration data of said user which is obtained only if said monitor is actually being worn by said user, and an output of said motion sensor (col. 7, lines 15-38 and col. 4, lines 1-27 of Richardson).

(J) Referring to claim 19, Richardson discloses wherein said acceleration data of said user is a synchronized exercise rhythm generated by said exercise monitor and obtained only if said monitor is actually being worn by said user, and said verifying is

processed if there is a high correlation between said synchronized exercise rhythm and an acceleration of said user's body which is related to said output of said motion sensor (col. 12, lines 1-12 of Richardson).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 4-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Richardson et al. (5,976,083) in view of Lang (US 2002/0070954 A1).

(A) Referring to claim 4, Richardson does not disclose wherein said verifying said user's identity is processed by asking said user one or more specific questions and allowing said user to input one or more correct answers for said one or more specific questions.

Lang disclose wherein said verifying said user's identity is processed by asking said user one or more specific questions and allowing said user to input one or more correct answers for said one or more specific questions (para. 42, lines 21-28 of Lang).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the features of Lang within Richardson. The motivation for doing so would have been for the user to gain access to the service (para. 42, lines 22-24 of Lang).

(B) Referring to claims 5 and 7, Richardson does not disclose wherein said one or more questions are selected out of a plurality of questions previously registered in said exercise monitor and wherein said one or more specific questions are delivered by telephone or said questions are stored in said exercise monitor in advance.

Lang discloses wherein said one or more questions are selected out of a plurality of questions previously registered in said exercise monitor and wherein said one or more specific questions are delivered by telephone or said questions are stored in said exercise monitor in advance (para. 42, lines 1-28 and abstract of Lang).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the features of Lang within Richardson. The motivation for doing so would have been to provide a secure method of access to the system (para. 42, lines 21-24 of Lang).

(C) Referring to claim 6, Richardson does not disclose wherein said verifying said user's identity is processed by asking said user one or more specific questions without notice.

Lang discloses wherein said verifying said user's identity is processed by asking said user one or more specific questions without notice (para. 42, lines 21-28 of Lang).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the features of Lang within Richardson. The motivation for doing so would have been to provide a secure method of access to the system (para. 42, lines 21-24 of Lang).

(D) Referring to claim 8, Richardson does not disclose wherein said one or more correct answers for said one or more specific questions are personal key words which only said user knows.

Lang discloses wherein said one or more correct answers for said one or more specific questions are personal key words which only said user knows (para. 42, lines 21-28 of Lang; the Examiner interprets "mother's maiden name" to be a form of "personal key words").

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the feature of Lang within Richardson. The motivation for doing so would have been to prevent fraudulent access to the system (para. 42, lines 20-28 of Lang).

6. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Richardson et al. (5,976,083) in view of Kulkarni (US 2001/0032098 A1).

(A) Referring to claim 10, Richardson does not disclose wherein said physiological data is a fingerprint pattern or voiceprint pattern of said user.

Kulkarni discloses wherein said physiological data is a fingerprint pattern or voiceprint pattern of said user (para. 29 of Kulkarni).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the features of Kulkarni within Richardson. The motivation for doing so would have been to ensure the integrity of the data being transmitted (para. 33 of Kulkarni).

7. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Richardson et al. (5,976,083) in view of Heilman et al. (5,078,134).

(A) Referring to claim 13, Richardson does not disclose wherein said instruction which said user can not obtain unless said user is actually wearing said exercise monitor adjacent to the body of said user, is to vibrate a portion of the skin of said user.

Heilman discloses wherein said instruction which said user can not obtain unless said user is actually wearing said device adjacent to the body of said user, is to vibrate a portion of the skin of said user (Fig. 17 and col. 14, lines 55-58 of Heilman).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the feature of Heilman within Richardson. The motivation for doing so would have been to alert the user of an incoming message (col. 14, lines 55-58 of Heilman).

8. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Richardson et al. (5,976,083) in view of Brown et al. (US 6,601,016 B1).

(A) Referring to claim 26, Richardson does not disclose a display means for displaying encoded exercise data based on said recorded output data from said motion sensor.

Brown discloses a display means for displaying encoded exercise data based on said recorded output data from said motion sensor (col. 14, lines 43-48 of Brown).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the features of Brown within Richardson. The motivation for

doing so would have been for data to be transmitted in a secure manner (col. 6, lines 29-32 of Brown).

Response to Arguments

9. Applicant's arguments with respect to claim 1 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lena Najarian whose telephone number is 571-272-7072. The examiner can normally be reached on Monday - Friday, 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas can be reached on 571-272-6776. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ln
4-17-06

C. LUKE GILLIGAN
PATENT EXAMINER